

February 1, 2006

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

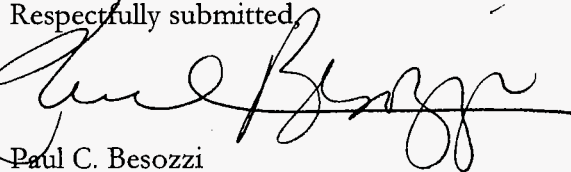
**Re: Ex Parte Notice – CC Docket No. 02-6**

Dear Ms. Dortch:

On Monday, January 30, 2006, the undersigned, along with Joy Jackson and Victor Gatto of Achieve Telecom Network of MA, LLC (“Achieve”), met with Narda Jones, Erica Myers, Romanda Williams and Richard Lerner of the Commission’s Wireline Competition Bureau, to discuss Achieve’s pending appeal of the denial by the Schools and Libraries Division of the Universal Service Administrative Company (“USAC”) of an application by the District of Columbia Public School System to obtain E-rate support for certain services to be provided by Achieve. The facts reflected in the attached materials, which were left with the Commission Staff attendees, were reviewed during the course of the meeting.

In accordance with Section 1.1206(b) of the Commission’s rules, this letter is being electronically filed with the Secretary through the ECFS.

Respectfully submitted,



Paul C. Besozzi  
Counsel for Achieve Telecom Network of MA, LLC

cc: Joy Jackson

**Achieve Telecom Network of MA, LLC**  
**Service Provider Identification**  
**Number: 143026761**

**Appeal To FCC Of E-Rate Funding Denial - Year 2005**

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***Background Facts***

Due to unique circumstances involving the departure of a responsible employee, the applicant, the District of Columbia Public Schools system ("DCPS"), failed to provide a certification of substantive responses to a Selective Review within the traditional 7-day period (i.e., by August 19, 2005). As a result, on September 1, 2005, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") denied the DCPS application for E-rate support because the "[a]pplicant failed to certify who prepared responses to the Selective Review ...[and] therefore, we cannot verify that the applicant takes responsibility for the response." When asked by the DCPS-proposed Service Provider, Achieve Telecom Network of MA, LLC ("Achieve Telecom"), what steps needed to be taken, Mr. Mel Blackwell of SLD recommended that Achieve Telecom appeal directly to the FCC. An appeal to the FCC by Achieve Telecom followed on October 12, 2005.

***Key Points Supporting Grant Of The Appeal:***

- The applicant had provided the substantive information requested by the Selective Review. As reflected by the denial, this was solely a matter of a delayed certification.
- The 7-day deadline that was missed by the DCPS was not a statutory or FCC rule, but an SLD-established internal administrative procedure.
- The requested certification would have had the DCPS merely certify that the Selective Review response was prepared by the same advisor to DCPS who is listed on the DCPS 471 Application as the applicant's official "Contact Person" for all reviews and responses.
- The DCPS official who was poised to provide the certification (the DCPS Chief Technology Officer ("CTO") left his job at DCPS on August 30, 2005 without informing anyone that the certifications were left unsigned.
- As a result, the new responsible DCPS party, the Chief Information Officer ("CIO") (first day of employment was August 15, 2005) was not aware of the need for these certifications until the SLD issued the Funding Commitment Decision Letter on September 1, 2005, denying funding for the application.
- During the time between the arrival of the new CIO and the departure of the CTO, the CTO assured everyone in the School District, but specifically the new CIO, that all requirements for the application (and other Funding Year 2005 471 applications), including all documentation and signed certifications, had been completed.

- There were only ten (10) working days between the agreed date for submitting the certifications and the denial letter.
- By definition the Contact Person on the 471 Application is the person who is designated and certified by the applicant to answer and provide documentation on behalf of the applicant. See Form 471 Instructions, page 11. Therefore, no separate certifications should have been required to be signed by the CTO acknowledging that the Contact Person (who was listed on the 471 as Garnet Person) was certified to provide documentation and respond to questions on behalf of DCPS. Nevertheless, the DCPS was prepared to provide the certifications.
- Sustaining the denial of this funding request based on the delay in an arguably redundant certification will deprive the students of the DCPS of meaningful educational and other services, a severe penalty for a minor administrative transgression.

### ***Application of Supporting FCC Precedent***

- In the Napierville Order (SLD – 203343, CC Docket Nos 94-45 and 97-21, Order 16 FCC Rcd 5032 – 2001), the FCC upheld the appeal, citing among other points that:
  - (2) the omitted information could be easily discerned by SLD through examination of other information included in the application;
  - (3) the application was otherwise substantially complete.

### ***Our comments***

As noted above, the certification requested confirmation of the preparation of the Selective Review responses by the same individual who was listed as the “Contact Person” on the 471 for these services. Clearly, SLD could easily discern the position of the Contact Person as an authorized respondent for DCPS since he was so listed on the 471.

In addition, the application and responses to the Selective Review were otherwise complete.

- In the Stafford Order (SLD – 250435, CC Docket 02-6), the FCC upheld the appeal citing among other points that:
  - 3. A rule may be waived where the particular facts make strict compliance **inconsistent with the public interest.**<sup>1</sup> In addition, the Commission may take into account considerations of hardship, equity, or effective implementation of overall policy on an individual basis.<sup>2</sup> **In sum, waiver is appropriate if special circumstances warrant a deviation from the**

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<sup>1</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

<sup>2</sup> *WAIT Radio*, 418 F.2d 1027, 1157 (1972) (*WAIT Radio*).

**general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>3</sup>**

4. Consistent with our precedent in the *Eastern Lebanon Order*, we conclude that Stafford's request for discounts on telecommunications services presents special circumstances warranting a waiver of our rules....<sup>4</sup> Stafford also sought discounts only for telecommunications services, and the Commission has authority to waive the deadline with respect to requests that involve only telecommunications services.<sup>5</sup>

#### ***Our comments***

The departure of the responsible DCPS employee, who had assured his replacement that the certifications had been provided, represents special circumstances that warrant deviation from the general 7-day rule. There is no doubt that the requested deviation from an SLD imposed administrative procedure would better serve the public interest in providing, at least, the proposed services to DCPS.

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<sup>3</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>4</sup> *See Request for Review by Eastern Lebanon County School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-232946, CC Docket Nos. 96-45 and 97-21, Order, 18 FCC Rcd 5466 (Wireline Comp. Bur. 2003) (*Eastern Lebanon Order*) (granting waiver request for telecommunications services for Funding Year 2001 where SLD unduly delayed notifying applicant of incomplete FCC Form 486).

<sup>5</sup> *See Eastern Lebanon Order*.



**Universal Service Administrative Company**  
Schools & Libraries Division

**FUNDING COMMITMENT DECISION LETTER**  
(Funding Year 2005: 07/01/2005 - 06/30/2006)

September 1, 2005

Joy Jackson  
Achieve Telecom Network of MA, LLC  
40 Shawmut Rd. Suite 200  
Canton, MA 02021

**Re: Service Provider Name: Achieve Telecom Network of MA, LLC**  
**Service Provider Identification Number: 143026761**

Thank you for participating in the E-rate program for Funding Year 2005 (07/01/2005 - 06/30/2006). This letter is your notification of our decision(s) regarding applications that listed your company's Service Provider Identification Number (SPIN) as providing service(s) for which discounts are being sought.

The Important Reminders and Deadlines immediately preceding this letter are provided to assist you and your customers throughout the application process.

**NEXT STEPS**

- File Form 473 (SPAC) for the current Funding Year
- Work with customer to provide appropriate invoicing to the SLD
- File Form 498, if appropriate
- Invoice the SLD - Service Provider Invoice (Form 474) or Billed Entity Applicant Reimbursement (Form 472)

**ADDRESS INFORMATION**

USAC needs to have current, complete and accurate contact and address information in order to properly make payments to service providers. The Form 498, Service Provider Information Form, is the official record of service provider contact and address information. If the Universal Service Administrative Company (USAC) determines that the contact or address information listed is not current, we will be unable to process payments. The Form 498 and its instructions are posted on the SLD web site under Forms. Service provider forms are found toward the bottom of the page. You may submit a Form 498 to revise contact and/or address information by fax to 888-637-6226. Label your fax cover sheet "FORM 498 REVISION."

Please refer to the Funding Commitment Report following this letter for specific funding request decisions and explanations. Each report contains detailed information extracted from the applicant's Form 471.

Once you've reviewed this letter, we urge you to contact your customers to begin any necessary arrangements regarding start of services, billing of discounts or any other administrative details for implementation of E-rate services. As a reminder, only eligible services delivered in accordance with Federal Communications Commission (FCC) rules are eligible for these discounts.

**TO APPEAL THIS DECISION:**

If you wish to appeal a decision in this letter, your appeal must be received by the SLD or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and (if available) e-mail address for the person who can most readily discuss this appeal with us.

2. State outright that your letter is an appeal. Include the following to identify the decision letter and the decision you are appealing:
  - Appellant name,
  - Applicant or service provider name,
  - BEN and/or SPIN,
  - Form 471 Application Number as assigned by the SLD,
  - "Funding Commitment Decision Letter for Funding Year 2005," AND
  - The exact text or the decision that you are appealing.
3. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal, including any correspondence and documentation.
4. If you are the applicant, please provide a copy of your appeal to the service provider(s) affected by the SLD's decision. If you are the service provider, please provide a copy of your appeal to the applicant(s) affected by the SLD's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to the SLD by e-mail, use the "Submit a Question" feature on the web site at [www.sl.universalservice.org](http://www.sl.universalservice.org). Click "Continue," choose "Appeals" from the Topics Inquiry on the lower portion of your screen, and click "Go" to begin your appeal submission. The system will prompt you through the process. The SLD will automatically reply to incoming e-mails to confirm receipt.

To submit your appeal to the SLD by fax, fax your appeal to (973) 599-6542.

To submit your appeal to the SLD on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division  
Box 125 - Correspondence Unit  
80 South Jefferson Road  
Whippany, NJ 07981

While we encourage you to resolve your appeal with the SLD first, you have the option of filing an appeal directly with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted in the Reference Area of our web site. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

#### NOTICE ON RULES AND FUNDS AVAILABILITY

Applicants' receipt of funding commitments is contingent on their compliance with all statutory, regulatory, and procedural requirements of the Schools and Libraries Universal Service Support Mechanism. Applicants who have received funding commitments continue to be subject to audits and other reviews that the USAC and/or the FCC may undertake periodically to assure that funds that have been committed are being used in accordance with all such requirements. The SLD may be required to reduce or cancel funding commitments that were not issued in accordance with such requirements, whether due to action or inaction, including but not limited to that by the SLD, the applicant, or the service provider. The SLD, and other appropriate authorities (including but not limited to USAC and the FCC), may pursue enforcement actions and other means of recourse to collect improperly disbursed funds. The timing of payment of invoices may also be affected by the availability of funds based on the amount of funds collected from contributing telecommunications companies.

Schools and Libraries Division  
Universal Service Administrative Company

### A GUIDE TO THE FUNDING COMMITMENT REPORT

A report for each E-rate funding request featuring your SPIN is attached to this letter. We are providing the following definitions for the items in that report.

**NAME OF BILLED ENTITY:** Name of entity from the Form 471.

**BILLED ENTITY ADDRESS:** Address of Billed Entity from the Form 471. Includes street address, city, state and zip code.

**BILLED ENTITY NUMBER:** A unique identifier assigned by the SLD to the Billed Entity.

**CONTACT PERSON'S NAME:** The name of the contact person from the Form 471.

**PREFERRED MODE OF CONTACT:** The preferred mode of contact from the Form 471, i.e., telephone, fax, or e-mail.

**CONTACT INFORMATION:** The telephone number, fax number, or e-mail address based on preferred mode of contact.

**FUNDING REQUEST NUMBER (ERN):** A Funding Request Number is assigned by the SLD to each Block 5 of the applicant's Form 471. This number is used to report to applicants and service providers the status of individual funding requests submitted on a Form 471.

**FORM 471 APPLICATION NUMBER:** A unique identifier assigned to a Form 471 application by the SLD.

**FUNDING STATUS:** Each ERN will have one of the following definitions:

1. An ERN that is "Funded" is approved at the level that the SLD determined is appropriate for this ERN. The funding level will generally be the level requested unless the SLD determined during the application review process that some adjustment is appropriate.
2. An ERN that is "Not Funded" is one for which no funds were committed. The reason for the decision will be briefly explained in the "Funding Commitment Decision Explanation." An ERN may be "Not Funded" because the request does not comply with program rules or because the total amount of funding available for this Funding Year was insufficient to fund all requests.

**CATEGORY OF SERVICE:** The type of service ordered from you, as shown on the Form 471.

**FORM 470 APPLICATION NUMBER:** The Form 470 associated with this ERN from Block 5, Item 12 of the Form 471.

**CONTRACT NUMBER:** The number of the contract between you and your customer. This will be present only if a contract number was provided on the Form 471.

**BILLING ACCOUNT NUMBER:** The account number that you have established with your customer for billing purposes. This will be present only if a Billing Account Number was provided on the Form 471.

**SERVICE START DATE:** The Service Start Date for this ERN from Block 5, Item 19 of the Form 471.

**CONTRACT EXPIRATION DATE:** The Contract Expiration Date for this ERN from Block 5, Item 20b of the Form 471. This will be present only if a contract expiration date was provided on the Form 471.

**SITE IDENTIFIER:** The Entity Number listed for this ERN on the Form 471. This will appear only for "site specific" ERNs.

**NUMBER OF MONTHS RECURRING SERVICE PROVIDED IN FUNDING YEAR:** The number of months the service has been approved in the funding year. This will only be present for recurring services.

**ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE RECURRING CHARGES:** Eligible monthly pre-discount amount for recurring charges multiplied by number of months recurring service provided in funding year.

**ANNUAL PRE-DISCOUNT AMOUNT FOR ELIGIBLE NON-RECURRING CHARGES:** Annual eligible non-recurring charges for the funding year.

**PRE-DISCOUNT AMOUNT:** The total eligible recurring and non-recurring charges under the program for the funding year.



APPLICANT'S DISCOUNT PERCENTAGE APPROVED BY THE SLD: The discount rate that the SLD has approved for this service.

FUNDING COMMITMENT DECISION: This represents the total amount of funding that the SLD has reserved to reimburse you for the approved discounts for this service for this funding year. It is important that you and your customer both recognize that the SLD should be invoiced and the SLD may direct disbursement of discounts only for eligible, approved services actually delivered and installed.

FUNDING COMMITMENT DECISION EXPLANATION: This entry provides an explanation of the amount in the "Funding Commitment Decision" area.

FCDL DATE: The date on the applicant's Funding Commitment Decision Letter.

WAVE NUMBER: The wave number assigned to FCDLs issued on this date.



## FUNDING COMMITMENT REPORT

Service Provider Name: Achieve Telecom Network of MA, LLC  
SPIN: 143026761  
Funding Year: 2005

Name of Billed Entity: DISTRICT OF COLUMBIA PUB SCHS  
Applicant Street Address: 825 N CAPITOL ST NE  
Applicant City: WASHINGTON  
Applicant State: DC  
Applicant Zip: 20002-4232  
Entity Number: 126340  
Preferred Mode of Contact: PHONE  
Contact Person's Name: Garnet Person  
Contact Information: (410) 902-5800 Ext. 135  
Form 471 Application Number: 479007  
Funding Request Number: 1324323  
Funding Status: Not Funded  
Category of Service: Telecommunications Service  
Form 470 Application Number: 447720000524078  
Contract Number: MTM  
Billing Account Number: N/A  
Service Start Date: 07/01/2005  
Contract Expiration Date: 06/30/2006  
Number of Months Recurring Service Provided in Funding Year: 12  
Annual Pre-Discount Amount for Eligible Recurring Charges: \$5400000.00  
Annual Pre-Discount Amount for Eligible Non-Recurring Charges: \$22500.00  
Pre-Discount Amount: \$5422500.00  
Applicant's Discount Percentage Approved by SLD: N/A  
Funding Commitment Decision: \$0.00 - Insufficient documentation  
Funding Commitment Decision Explanation: Applicant failed to certify who prepared responses to the Selective Review; therefore, we cannot verify that the applicant takes responsibility for the response.

FCDL Date: 09/01/2005  
Wave Number: 010

471 Application Number	FRN	470 Application Number	Applicant Name	BEN	Applicant Type
478847	1323620	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
478870	1323782	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
478870	1323907	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
479007	1324323	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460034	1322737	6.69E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460034	1324933	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460078	1322917	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460078	1322939	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460078	1322983	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460078	1323028	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460078	1325011	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT
460078	1325102	4.48E+14	DISTRICT OF COLUMBIA PUB SCHS	126340	DISTRICT

Applicant Street Address1	Applicant Street Address2	Applicant City	Applicant State	Applicant Zip Code	SPIN
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143025719
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143000904
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143024165
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143026761
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143002681
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143001197
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143004333
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143002681
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143001197
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143025686
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143002681
825 N CAPITOL ST NE		WASHINGTON	DC	20002	143001197

<b>Service Provider Legal Name</b>	<b>Commitment Status FCDL</b>
ePlus Technology, Inc	NOT FUNDED
Nextel	NOT FUNDED
AT&T Wireless Services, Inc.	NOT FUNDED
Achieve Telecom Network of MA, LLC	NOT FUNDED
Verizon- Washington, D.C. Inc.	NOT FUNDED
MCI Communications Corporation	NOT FUNDED
Verizon Network Integration Corp	NOT FUNDED
Verizon- Washington, D.C. Inc.	NOT FUNDED
MCI Communications Corporation	NOT FUNDED
KidBiz3000	NOT FUNDED
Verizon- Washington, D.C. Inc.	NOT FUNDED
MCI Communications Corporation	NOT FUNDED

Commitment Status TXT FCDL		
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